

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS,

Complainant,

and

LEEWARD ROOFING & GENERAL  
CONTRACTING,

Respondent.

CASE NO. OSH 2010-25

ORDER NO. 412

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board (Board) on December 13, 2010 and attended by Robyn M. Kuwabe, Deputy Attorney General, for Complainant, and Clayton Rivera, for Respondent, IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial are:

1. Citation 1, Item 1: 29 CFR 1926.502(d)(21)

Whether the characterization as "Serious" and the associated penalty of \$2,100.00 of Citation 1, Item 1, resulting from Inspection No. 313078859, was valid and proper.

Citation 1, Item 1 alleged:

29 CFR 1926.502(d)(21) was violated because:

The employer failed to provide adequate fall protection training to their employees to recognize and address fall hazards that they may encounter at project sites. Employees walked and worked on a commercial building roof even though fall protection systems were not in place around thirty-eight skylights that were between 25 to 29 feet above the interior floor level.

Employees installed and used two defective anchor straps on a commercial building roof. Fall hazards exposed employees to potential serious injuries.

2. Citation 2, Item 1: HAR § 12-110-2(f)(1(A))

Whether the characterization as “Willful” and the associated penalty of \$21,000.00 of Citation 2, Item 1, resulting from Inspection No. 313078859, was valid and proper.

Citation 2, Item 1 alleged:

HAR § 12-110-2(f)(1(A)) was violated because:

The employer allowed their employees and subcontractor employees to walk and work on commercial building roof when fall protection systems were not in place around thirty-eight skylights that were between 25 to 29 feet above the interior floor level. As fall protection systems around the roof skylights were not in place, the employer and subcontractor employees were exposed to fall hazards with the potential for serious injuries. On January 26, 2010, a subcontractor employee fell through an unprotected roof skylight and sustained serious injuries.

3. Citation 2 Item 2: 29 CFR 1926.501(b)(4)(i)

Whether the characterization as “Willful” and the associated penalty of \$21,000.00 of Citation 2, Item 2, resulting from Inspection No. 313078859, was valid and proper.

Citation 2, Item 2 alleged:

29 CFR 1926.501(b)(4)(i) was violated because:

Six employees walked and worked on a commercial building roof which had thirty-eight skylights that were between 25-29 feet above the interior floor level. All employees were not protected from falling through the skylights by conventional fall protection systems erected around the skylights, thus the employees were exposed to fall hazards with the potential for serious injuries.

4. Citation 3 Item 1: 29 CFR 1926.503(b)(1)

Whether the characterization as “Other” of Citation 3 Item 1, resulting from Inspection No. 313078859, was valid and proper.

Citation 3, Item 1 alleged:

29 CFR 1926.503(b)(1) was violated because:

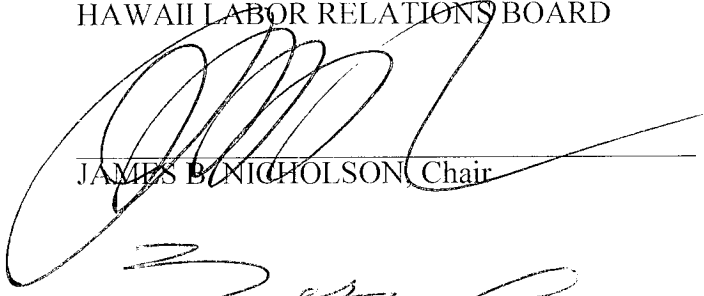
The employer had not completed written fall protection certification records for six workers who were exposed to various potential fall hazards at a commercial building roof project.

5. Complainant may challenge the timeliness of the instant contest.
  6. Respondent may rely upon the affirmative defense of employee misconduct.
- B. The deadline for the parties’ final naming of witnesses is **February 16, 2011**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness’s addresses and the general subject to which the witness will testify, to the other party and to the Board by this date.
- C. The parties may engage in discovery without prior motion or showing of good cause. The discovery cutoff date is **March 14, 2011**. The discovery cut-off is the date by which all responses to written discovery, including requests for admissions, shall be due and by which all depositions shall be concluded. The parties are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this requirement.
- D. Trial in this matter is scheduled for **April 12 - 13, 2011 at 9:00 a.m.** in the Board’s hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.
- E. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. LEEWARD  
ROOFING & GENERAL CONTRACTING,  
CASE NO. OSH 2010-25  
ORDER NO. 412  
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DATED: Honolulu, Hawaii, December 14, 2010.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



NORMAN K. KATO II, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Robyn M. Kuwabe, Deputy Attorney General  
Clayton Rivera